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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

JH KELLY, LLC

Plaintiff,

vs.

AECOM TECHNICAL SERVICES, INC., et
al.

Defendant.

Case No. 4:20-cv-05381-HSG (Lead Case)

(Reference withdrawn from Bankruptcy
Case No. 19-30088, Adv. Proc. No. 20-
03019 and Adv. Proc. No. 19-03008)

(Consolidated with Case No. 3:20-cv-
08463-EMC)

**ORDER ON STIPULATION TO
BIFURCATE AECOM'S
THIRTEENTH AND FOURTEENTH
CAUSES OF ACTION FOR
INDEMNITY AND JH KELLY'S
CLAIMS FOR COSTS, ATTORNEY
FEES, INTEREST, AND STATUTORY
PENALTIES**

Plaintiff and Counterclaim Defendant JH Kelly, LLC ("JHK") and Defendant and
Counterclaim Plaintiff AECOM Technical Services, Inc. ("AECOM") (collectively, the
"Parties"), by and through their respective counsel, stipulate as follows:

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1 WHEREAS, the Parties met and conferred pursuant to the Honorable Judge Gilliam's Pre-
2 Trial Order to clarify and narrow the contested issues for trial.

3 WHEREAS, the Parties agree that AECOM's Thirteenth Cause of Action for Express
4 Indemnity and Fourteenth Cause of Action for Equitable Indemnity as they apply to AECOM's
5 claims of duty to defend against JHK and resulting damages for the claim of failure to defend,
6 involve a legal issue for the Court to determine, and therefore are not appropriate for the jury.
7 *See Centex Homes v. R-Help Constr. Co.*, 32 Cal. App. 5th 1230, 1232 (2019). Furthermore,
8 evidence of damages for these causes of action consists of AECOM's legal bills which, if
9 provided to the jury, would be prejudicial to AECOM in potentially revealing legal strategy for
10 the remaining claims and defenses at issue in the trial.

11 WHEREAS, pursuant to Federal Rule of Civil Procedure 42, for convenience, to avoid
12 unfair prejudice, and to expedite and economize the trial, the Parties seek to bifurcate AECOM's
13 Thirteenth and Fourteenth Causes of Action, as they pertain to the duty to defend and defense fees
14 and costs only, to be heard by the Court, following the jury trial on the remaining claims.

15 WHEREAS, the Parties agree that AECOM will not introduce, mention, or refer to
16 evidence of its damages related to the claim that JH Kelly failed to defend AECOM, during the
17 pendency of the jury trial.

18 WHEREAS, the Parties also agree that JHK's Seventh Claim for Relief for Violation of
19 California Prompt Payment Laws against AECOM and JHK's requests for litigation costs,
20 attorney fees and contractual and statutory interest, are to be determined by the Court after the
21 jury has rendered a verdict. *See* Fed. R. Civ. Proc. § 54(d) (discussing costs and fees); *see Radio*
22 *Television Espanola S.A. v. New World Entertainment, Ltd.* (9th Cir. 1999) 183 F.3d 922, 929
23 (bill of costs filed after entry of judgment); *Port of Stockton v. Western Bulk Carrier KS*, 371 F.3d
24 1119, 1120-21 (9th Cir. 2004) (fee request made by post-trial motion); *United Riggers &*
25 *Erectors, Inc. v. Coast Iron & Steel Co.*, 4 Cal. 5th 1082, 1086 (2018) (discussing prompt
26 payment penalties awarded to prevailing party); *Barnard v. Theobald*, 721 F.3d 1069, 1078 (9th
27 Cir. 2013) (District court has discretion to determine interest after jury renders a verdict).
28

1 WHEREAS, pursuant to Federal Rules of Civil Procedure 42, for convenience, to avoid
 2 prejudice, and to expedite and economize the trial, the Parties seek to bifurcate JHK's Seventh
 3 Claim for Relief for Violation of California Prompt Payment Laws against AECOM as well as
 4 JHK's requests for litigation costs, attorney fees and contractual and statutory interest, to be
 5 determined by the Court, after a jury verdict has been rendered.

6 WHEREAS, the Parties agree that JHK will not introduce, mention, or refer to its Seventh
 7 Claim for Relief for Violation of California Prompt Payment Laws against AECOM or introduce
 8 evidence of its related damages including litigation costs, attorney fees, or contractual or statutory
 9 interest during the pendency of the jury trial.

10 NOW THEREFORE, in consideration of the foregoing, the Parties, by and through their
 11 respective counsel, hereby STIPULATE and AGREE as follows:

12 1. AECOM's Thirteenth Cause of Action for Express Indemnity and Fourteenth
 13 Cause of Action for Equitable Indemnity as they apply to AECOM's claims of duty to defend
 14 against JHK and resulting damages for the claim of failure to defend against JHK shall be
 15 bifurcated to be decided by the Court following the conclusion of the jury trial; however, the
 16 remaining factual issues in these Causes of Action shall not be bifurcated.

17 2. JHK's Seventh Claim for Relief for Violation of California Prompt Payment Laws
 18 against AECOM and JHK's requests for litigation costs, attorney fees and contractual and
 19 statutory interest, shall be bifurcated to be decided by the Court, after the jury has rendered a
 20 verdict in the trial.

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 22 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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 24 DATED: 1/13/2022

25 By: 
 26 HAYWOOD S. GILLIAM, JR.
 27 United States District Judge
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